

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

MATRIXCARE INC.,

Plaintiff,

v.

**ORDER**

Civil File No. 19-1684 (MJD/SER)

NETSMART TECHNOLOGIES, INC.,

Defendant.

---

William D. Schultz, Paige Stradley, and Joseph Dubis, Merchant & Gould P.C., Counsel for Plaintiff.

Kevin D. Conneely and Ruth Rivard, Stinson LLP, Counsel for Defendant.

---

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated July 12, 2019. Plaintiff MatrixCare Inc. filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). The Court declines to adopt the portion of the Report and Recommendation stating that MatrixCare has not established a private right of action based on a violation of 18 U.S.C. § 1030(a)(4),

found at page 16 of the Report and Recommendation. The Court need not decide, at this time, whether the 2008 amendment to the Computer Fraud and Abuse Act established a private right of action for violations of § 1030(a)(4), as long as the alleged violation “involves 1 of the factors set forth in subclauses (I), (II), (III), (IV), or (V) of subsection (c)(4)(A)(i).” 18 U.S.C. § 1030(g). Assuming that a private right of action exists, the statute requires that unauthorized access be done “knowingly and with intent to defraud.” See 18 U.S.C. § 1030(a)(4); Sebrite Agency, Inc. v. Platt, 884 F. Supp. 2d 912, 916 (D. Minn. 2012). As the Report and Recommendation noted, at this time, MatrixCare has failed to show evidence to support a finding of access that was unauthorized or in excess of authority that was done knowingly and with intent to defraud.

Based upon the Court’s de novo review and with the modification noted above, the Court adopts the Report and Recommendation of United States Magistrate Judge Thorson dated July 12, 2019.

Accordingly, based upon the files, records, and proceedings herein, **IT IS  
HEREBY ORDERED:**

1. The Court **ADOPTS** as modified above the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated July 12, 2019 [Docket No. 38].

2. Plaintiff's MatrixCare Inc.'s Motion for a Temporary Restraining Order [Docket No. 9] is **DENIED**.

Dated: July 30, 2019

s/ Michael J. Davis

Michael J. Davis

United States District Court